

The Honorable Richard A. Jones
The Honorable Magistrate J. Richard Creatura

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

IAN SIMMERS,

Plaintiff,

v.

KING COUNTY; the CITY OF BOTHELL;
DET. EDWARD J. HOPKINS; Sergeant.
CLEMENT RUSK; DET. REBECCA
MINER; DET. JOHN MCSWAIN; DET.
PAT RAFTUS; DET. KEN BAXTER;
CHIEF MARK ERICKS; DET. SGT.
DAVID SCHLAEGEL; and MAJ.
JACKSON BEARD; Unknown Officers of
the City of Bothell Police Department; and
Unknown Sheriff Deputies of King County,

Defendants.

No. 2:21-CV-100-JRC-RAJ

CITY DEFENDANTS' REPLY TO
PLAINTIFF'S OMNIBUS RESPONSE
TO MOTION TO DISMISS OF
DEFENDANTS CITY OF BOTHELL,
EDWARD HOPKINS, REBECCA
(MINER) DONLEY, MARK ERICKS
AND DAVID SCHLAEGEL

NOTE ON MOTION CALENDAR:
APRIL 16, 2021

SUMMARY OF REPLY

Simmers' foundational claims are that his two confessions, both of which revealed facts known only to Rodney Gochanaur's killer, were wrongfully obtained by police and improperly admitted into evidence by the criminal trial court, in violation of his constitutional rights and *Brady v. Maryland*.¹ Dkt. No. 1, *passim*. Simmers states "[t]he misconduct alleged" consists of "deliberate coercion of a juvenile in an interrogation, the fabrication of false inculpatory statements, and the suppression of exculpatory evidence." Dkt. 40, p. 9:23-25. These claims are barred by collateral estoppel because each claim was fully adjudicated

¹ 373 U.S. 83 (1963).
CITY DEFENDANTS' REPLY TO CITY DEFENDANTS'
MOTION TO DISMISS- 1
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1 in the trial court during adversarial proceedings in which Simmers was represented by
2 counsel. Dkt. #30 at pp. 344-362 (confession) and 730-738 (*Brady* claim).

3 Simmers is also barred by judicial estoppel from claiming that the questioning
4 techniques used by police leading to his confession were improper, because he successfully
5 argued to the King County Superior Court as the basis for vacating his conviction that those
6 questioning techniques were widely used and considered acceptable for juvenile suspects.
7 Dkt. #30 at pp. 762:19-21, 764:9-10. Simmers argued that recent scientific advances show
8 such techniques may lead to false confession, but assured the court that “[l]ittle or none” of
9 the new information about juvenile confession “was available at the time to police,
10 prosecutors, defense attorneys, judges or juries in confession cases.’ Dkt. #30 at 764:9-10.

11 To avoid the clear contradiction between his position in this case and the position he
12 took in the trial court when moving to vacate his conviction, Simmers now recasts the basis
13 for his CrR 7.8 motion by repeatedly claiming his conviction was vacated because he was
14 “exonerated by DNA evidence in 2019.” Dkt. 40, pp. 1:24-25, 3:8-10, 6:4-6, 15:26-27, 18:1-
15 4, 21:16-17. This claim is belied by the record (*see* Dkt. No. 30, pp. 753-767) and
16 disingenuous, at best. The State never claimed the blood evidence on the knife Simmers used
17 to kill Gochanauer belonged to Simmers. To the contrary, the State stipulated at Simmers’
18 criminal trial that the blood on the knife was Gochanauer’s alone. Dkt. No. 30 at pp. 25, 366
19 (minute entry); Dkt. No. 30 at pp. 755:4-6 (CrR 7.8 motion). Moreover, Simmers never
20 claimed he was cut or bled during his assault on Gochanaur. Dkt. No. 30 at pp. 780-796
21 (confession). There was no evidence Simmers suffered any injury in the assault.

22 REPLY

23 Rule 12 Legal Standard and Judicial Notice. Simmers acknowledges that Rule 12(c)
24 permits the court to consider extrinsic evidence if it is “material which is properly submitted
25 as part of the complaint” or “matters of public record” subject to judicial notice. Dkt. No. 40,
26 p. 7:9-11. State court documents are public records of which judicial notice is appropriate.
27 Simmers must therefore admit the City Defendants’ motion to dismiss is procedurally proper.

1 This is particularly true here, where every document the City Defendants rely upon emanates
 2 from Simmers' own criminal trial or his own post-trial motions. *See e.g.* Dkt. No. 30, *passim*.

3 Simmers cites *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988 (9th Cir. 2018) to
 4 argue, without analysis, that the City Defendants impermissibly make "unscrupulous use of
 5 extrinsic documents" by seeking judicial notice of contested facts. Dkt. No. 40, p. 10:25-26.
 6 The *Khoja* court reviewed a Rule 12 motion in which contested documents were relied upon
 7 by the District Court in an SEC fraud action, noting that where a document is subject to
 8 varying interpretations and there is a reasonable dispute as to what it establishes, the
 9 document cannot be judicially noticed. As stated, the City Defendants rely here upon public
 10 court documents from Simmers' own criminal trial and post-trial motions. There is no
 11 reasonable dispute about what those documents presumptively establish. *Khoja* does not
 12 prevent a defendant from using the doctrine of judicial notice by reference to dispute a
 13 plaintiff's conclusory allegations and nothing in *Khoja* prevents this Court from analyzing
 14 Simmers' Complaint in context. *Khoja* at 1002 ("[T]he policy concern underlying
 15 [incorporation by reference]" is to "[p]revent[] plaintiffs from surviving a Rule 12(b)(6)
 16 motion by deliberately omitting references to documents upon which their claims are based").

17 Collateral Estoppel Bar. "[T]he doctrine of collateral estoppel can apply to preclude
 18 relitigation of both issues of law and issues of fact if those issues were conclusively
 19 determined in a prior action." *Wolfson v. Brammer*, 616 F.3d 1045, 1064 (9th Cir. 2010)
 20 (citing *United States v. Stauffer Chem. Co.*, 464 U.S. 165, 170–71, 104 S.Ct. 575, 78 L.Ed.2d
 21 388 (1984)). Simmers acknowledges that "State law governs the application of collateral
 22 estoppel or issue preclusion to a state court judgment in a federal civil rights action." *Ayers*
 23 *v. City of Richmond*, 895 F.2d 1267 (9th Cir.1990). Therefore, the only collateral estoppel
 24 law this Court needs to consider is Washington law.

25 Under Washington law, collateral estoppel requires (1) identical issues; (2) a final
 26 judgment on the merits; (3) the party against whom the plea is asserted must have been a
 27 party to or in privity with a party to the prior adjudication; and (4) application of the doctrine

1 must not work an injustice on the party against whom the doctrine is to be applied. *Schroeder*
 2 *v. Excelsior Management Group, LLC*, 177 Wn.2d 94, 108, 297 P.3d 677 (2013). Collateral
 3 estoppel bars re-litigation of “issues actually litigated” and “necessarily decided” in a prior
 4 adjudication. *City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 164 Wn.2d
 5 768, 792, 193 P.3d 1077 (2008); *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d
 6 299, 307, 96 P.3d 957 (2004). An important clarification of the first requirement that an issue
 7 was “decided” in the earlier proceeding is that the issue must have been “actually litigated
 8 and necessarily determined” in that proceeding. *Shoemaker v. City of Bremerton*, 109 Wn.2d
 9 504, 508, 745 P.2d 858 (1987).

10 Confession to Police. During his criminal trial, Simmers argued through counsel that
 11 his confession was not freely and voluntarily made, both because he was a juvenile and
 12 because of the circumstances surrounding his confession, including the implicating
 13 statements of Jonathan Wyatt and alleged suggestive questioning and oppressive tactics by
 14 police. Dkt. No. 30, at pp. 345-351, 53-270, 299, and pp. 301-317. Simmers made it clear
 15 during his CrR 3.5 suppression hearing that he was “impeaching the entire quality of the
 16 investigation.” *Id.* at. 278:21-22. Following that hearing, the trial court entered Findings of
 17 Fact and Conclusions of Law holding Simmers’ “statements to the police were freely and
 18 voluntarily given” and rejecting his claims of police misconduct. *Id.* at pp. 353-362. The trial
 19 court “necessarily decided” the “issues actually litigated” concerning Simmers’ confession.

20 Confession to Olsen; Brady Claim. Post-conviction, Simmers moved for a new trial
 21 based on alleged *Brady* violations associated with Olsen’s testimony, which detailed
 22 Simmers’ second confession to Gochanauer’s murder. Dkt. 30, at pp. 410-729. Following an
 23 adversarial hearing at which Simmers was again represented by counsel, the trial court
 24 entered Findings of Fact and Conclusions of Law holding there had been no *Brady* violation.
 25 *Id.* at pp. 731-738. That decision and Simmers’ conviction were affirmed by Division I of the
 26 Court of Appeals. *State v. Simmers*, 95 Wn. App. 1049 (1999). This Washington
 27 presumptively resolved and bars relitigation of Simmers’ *Brady* violation claim.

1 Simmers argues that collateral estoppel is inapplicable for five reasons. First, he
2 argues that a “vacated conviction is not a final judgment for purposes of collateral estoppel.”
3 Dkt. 40, p. 15:5-6. This argument confuses issue preclusion with claim preclusion.

4 In Washington, collateral estoppel bars relitigation of an *issue* in a subsequent
5 proceeding involving the same parties. *Scholz v. Washington State Patrol*, 3 Wn. App.2d 584,
6 416 P.3d 1261 (2018) (barring relitigation in civil action of issues resolved in labor
7 arbitration); *see also Reninger v. State Dep't of Corr.*, 134 Wn.2d 437, 454, 951 P.2d 782
8 (1998) (barring relitigation in civil action of issues resolved in administrative proceedings).
9 Collateral estoppel is distinguished from claim preclusion, or *res judicata*, in that instead of
10 preventing a second assertion of the same claim or cause of action, it prevents a second
11 litigation of issues between the parties, even though a different claim or cause of action is
12 asserted. *Ullery v. Fulleton*, 162 Wn. App. 596, 602, 256 P.3d 406 (2011) (citing *Christensen*
13 *v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299, 306, 96 P.3d 957 (2004)). “Collateral
14 estoppel is concerned only with limiting the relitigation of factual issues.” 14A Karl B.
15 Tegland, *Washington Practice: Civil Procedure* § 35:33, at 552-53 (2d ed. 2009); *see also*
16 *Hanson v. Snohomish*, 121 Wn.2d 552, 852 P.2d 295 (1993) (barring relitigation of police
17 procedures in civil action following reversal of criminal conviction). That the State agreed to
18 vacate Simmers’ conviction has no bearing on whether Simmers is estopped from relitigating
19 issues that were resolved in his state court criminal proceeding.

20 Second, Simmers argues that the issues presented in this case differ from those
21 decided in the criminal case. Dkt. 40, p. 15:22-23. This argument misapprehends the scope
22 of collateral estoppel. When collateral estoppel is asserted, the former claim and the new
23 claim can be expected to raise at least some different ultimate issues. *Scholz*, 3 Wn. App.2d
24 at 596-597 (citing *Island County v. Mackie*, 36 Wn. App. 385, 392, 675 P.2d 607 (1984)).
25 What matters is whether *facts* established in the first proceeding foreclose the second claim.
26 *Id.* (emphasis added). Here, record shows precisely what issues Simmers argued in the
27 criminal proceeding and precisely what issues the trial court decided.

1 Simmers raises as a “new issue” the straw man that “DNA evidence exonerated (him),
2 and showed that his purported (and fabricated) confession to murder was false as a matter of
3 fact, was (sic) unknown during the criminal case.” Dkt. 40, pp. 15:26-16:2. Again, this false
4 and factually unsupported argument is a non-issue, because the State stipulated at Simmers’
5 criminal trial that the blood on the knife Simmers used to stab Gochanauer belonged to
6 Gochanauer, not to Simmers. Dkt. No. 30 at pp. 25, 366. Whatever issues remain undecided,
7 they do not include Simmers’ alleged “wrongful confession” or *Brady* claims.

8 Third, Simmers argues he did not have a full and fair opportunity to litigate any of the
9 issues raised in this civil case during his criminal proceedings. Dkt. 40, p. 17:3-4. The record
10 shows this is simply untrue regarding his “wrongful confession” and *Brady* claims. *See* Dkt.
11 30, *passim*. Simmers vigorously litigated those issues in adversarial proceedings.

12 Fourth, Simmers argues that applying collateral estoppel in this case would be
13 manifestly unjust. Dkt. 40, p. 17:17-18. Washington case law on the injustice element is most
14 firmly rooted in procedural unfairness. “Washington courts look to whether the parties to the
15 earlier proceeding received a full and fair hearing on the issue in question.” *Thompson v.*
16 *Dep’t of Licensing*, 138 Wn.2d 783, 795-96, 982 P.2d 601 (1999) (quoting *In re Marriage of*
17 *Murphy*, 90 Wn. App. 488, 498, 952 P.2d 624 (1998)). A plaintiff who had an opportunity to
18 present his evidence to the trial does not suffer an injustice in the application of collateral
19 estoppel. *Hanson*, 121 Wn.2d at 563. “There is nothing inherently unfair about [issue
20 preclusion] provided the party has the full and fair opportunity to litigate, there is no
21 significant disparity of relief, and all the other requirements of collateral estoppel are
22 satisfied.” *Christensen*, 152 Wn.2d at 313.

23 Finally, Simmers argues that *Hanson* does not support application of collateral
24 estoppel in this case beyond a probable cause determination. But as recognized by the
25 Washington Supreme Court in *Thompson v. State, Dep’t of Licensing*, 138 Wn. 2d 783, 799–
26 800, 982 P.2d 601 (1999), *Hanson* expressly states, without limitation, that collateral estoppel
27 in Washington “prevents relitigation of an issue after the party estopped has had a full and

1 fair opportunity to present its case.” *Hanson*, 121 Wn.2d at 561. Collateral estoppel may be
 2 applied in a civil action in which a party seeks to retry any issue resolved against him in a
 3 previous criminal case, as well as in a civil rights action in which issues raised are the same
 4 as those determined in a criminal case. *Hanson*, 121 Wn.2d at 561-562 (citing *Allen v.*
 5 *McCurry*, 449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980)).

6 Washington courts have applied the rule that “a final judgment includes any prior
 7 adjudication of an issue in another action that is determined to be sufficiently firm to be
 8 accorded conclusive effect.” *In re Dependency of H.S.*, 188 Wash. App. 654, 661, 356 P.3d
 9 202 (2015). In Washington, “[f]actors for a court to consider in determining whether the
 10 requisite firmness is present include whether the prior decision was adequately deliberated,
 11 whether it was firm, rather than tentative, whether the parties were fully heard, whether the
 12 court supported its decision with a reasoned opinion, and whether the decision was subject to
 13 appeal or in fact was reviewed on appeal.” *Cunningham v. State*, 61 Wn. App. 562, 567, 811
 14 P.2d 225 (1991). The Ninth Circuit has also repeatedly held that when an individual has the
 15 opportunity to challenge a probable cause determination in the course of a prior state court
 16 proceeding, he will generally be barred from re-litigating the issue in a subsequent § 1983
 17 action. *See Awabdy v. City of Adelanto*, 368 F.3d 1062, 1068 (9th Cir. 2004); *Haupt v. Dillard*,
 18 17 F.3d 285, 288–90 (9th Cir.1994) (applying Nevada law and holding state judge's finding
 19 that probable cause existed to bind defendant for trial barred subsequent re-litigation as to
 20 whether probable cause existed to support claims under § 1983).

21 Moreover, this Court, applying Washington law, has held that collateral estoppel bars
 22 claims for false arrest and malicious prosecution where the issue of probable cause had
 23 already been decided by the state court in a prior criminal proceedings. *Thompson v.*
 24 *Copeland*, Case No. C14–1769–MJP–MAT, 2015 WL 6738861 (W.D.Wash. July 24, 2015)
 25 (citing *Fontana v. City of Auburn*, Case No. C13–245–JCC, 2014 WL 4162528, at *7
 26 (W.D.Wash. Aug.21, 2014) (concluding that collateral estoppel barred re-litigation of
 27 probable cause finding by municipal court); *Wakgira v. City of Seattle*, Case No. C08–1108–

1 JLR, 2009 WL 2406330, at *15 (W.D.Wash. Aug.3, 2009) (holding that collateral estoppel
2 barred claims for false arrest, false imprisonment, and malicious prosecution because issue
3 of probable cause had already been determined by the state court). The Ninth Circuit in
4 *Haupt*, and this court in *Fontana* and *Wakgira*, also recognized that a probable cause
5 determination at a preliminary hearing can bar re-litigation of the issue of probable cause in
6 a subsequent civil rights action, even where the individual was not convicted in the prior
7 criminal action. *See Haupt*, 17 F.3d at 288–89; *Fontana*, 2014 WL 4162528, at *8; *Wakgira*,
8 2009 WL 2406330, at *14.

9 In sum, *Hanson* is not constrained to circumstances in which a lack of probable cause
10 is alleged in civil actions following reversal of a prior criminal conviction. It applies if the
11 second litigation raises the same *issues* between the same parties, even though a different
12 claim or cause of action is asserted. *Plancich v. County of Skagit*, 147 F.Supp.3d 1158, 1163
13 (W.D. Wash. 2015) (citing *Rains v. State*, 100 Wn.2d 660,665, 674 P.2d 165 (1983)).

14 For example, a suppression hearing in a criminal matter has collateral estoppel effect
15 over subsequent civil litigation involving the constitutionality of a search. *See Barlindal v.*
16 *City of Bonney Lake*, 84 Wn. App. 135, 925 P.2d 1289, 1293 (1996) (suppression hearing on
17 whether search warrant was valid had preclusive effect over City's re-litigation of validity of
18 search); *accord Haupt*, 17 F.3d at 289 (criminal hearing on whether probable cause supported
19 arrest warrant had preclusive effect over subsequent civil rights action claiming that the
20 warrant was invalid). Thus, a determination at a suppression hearing that necessarily involves
21 the question of whether a confession is constitutional and arguing the validity of that
22 confession in a subsequent civil proceeding, represents an identical issue for collateral
23 estoppel purposes. *Barlindal*, 84 Wn. App. at 142.

24 Nothing in *Hanson* indicates that it should be limited to the tort actions it addressed.
25 In fact, the *Hanson* court held that the conviction of the plaintiff established probable cause
26 as a matter of law not only for his claim of malicious prosecution, but also for his claims of
27 false arrest and false imprisonment and his civil rights claim. *Accord Bergstrahl v. Lowe*, 504

1 F.2d 1276 (9th Cir. 1974) (conviction establishes probable cause in the context of a §1983
 2 action that alleged arrest was without probable cause); *Doggett v. Perez*, 348 F.Supp.2d 1198
 3 (E.D.Wash.2004) (applying *Hanson* in §1983 action alleging absence of probable cause).

4 Judicial Estoppel Bar. The Washington Supreme Court has outlined three “core
 5 factors” to guide the application of judicial estoppel: (1) whether a party's later position is
 6 clearly inconsistent with its earlier position; (2) whether judicial acceptance of an inconsistent
 7 position in a later proceeding would create the perception that either the first or the second
 8 court was misled; and (3) whether the party seeking to assert an inconsistent position would
 9 derive an unfair advantage or impose an unfair detriment on the opposing party if not
 10 estopped. *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 538–39, 160 P.3d 13 (2007). In
 11 moving to vacate his conviction, Simmers stated a clear basis for the relief he requested:
 12 scholarly study of juvenile brain development and the psychological and social reasons for
 13 false juvenile confessions warrant increased scrutiny of his confession to police. Dkt. 30, pp.
 14 753-767. The trial court accepted that position and vacated the conviction. *Id.* at p. 836-837.

15 In making his motion to vacate, Simmers clearly informed the trial court that the
 16 police officers questioning him used the widely accepted Reid techniques. He assured the
 17 trial court that “few if any police officers contemplated that standard psychological
 18 interrogation tactics, especially when used on youthful suspects, could produce false
 19 confessions.” Dkt. No. 30, p. 762:19-21. He further assured the trial court that “[a]t the time
 20 of Mr. Simmers' 1996 trial, the legal community did not understand juvenile brain
 21 development or the reality of false confessions the way we now do.” *Id.* at p. 761:16-17. He
 22 stated “[i]n the more than two decades since (he) was arrested, there has been a sea change
 23 in understanding about adolescent brain development and the causes and consequences false
 24 confessions. Little or none of this information was available at the time to police, prosecutors,
 25 defense attorneys, judges or juries in confession cases.” *Id.* at p. 764:7-9.

26 In contrast, Simmers now states “[t]he misconduct alleged” consists of “deliberate
 27 coercion of a juvenile in an interrogation, the fabrication of false inculpatory statements, and

1 the suppression of exculpatory evidence.” Dkt. 40, p. 9:23-25. Simmers seeks to impose legal
 2 liability on the very police officers he previously assured the trial court had blamelessly
 3 employed the widely accepted Reid technique to question him, unaware of the potential for
 4 a false juvenile confession. He now alleges the individual officers used manipulative,
 5 coercive and improper interrogation techniques. *See* Dkt. No. 1, *passim*. These claims are
 6 inconsistent with the claims he made when seeking to vacate his conviction. Simmers should
 7 be bound to his prior, contrary assertion that in 1996, the police officers had no reason to
 8 believe that their actions could produce false confessions, barring his claim to the contrary.

9 Heck v. Humphrey Bar. Federal courts look at the allegations made in the § 1983 suit
 10 and what, if any, effect they would have on the conviction, whether it arises out of a guilty
 11 plea or a jury’s verdict. If the challenge would not necessarily invalidate the conviction, the
 12 suit may proceed; if the challenge would necessarily invalidate the conviction, the suit is
 13 *Heck*-barred. The Ninth Circuit has not adopted a rule that guilty pleas cannot operate as a
 14 *Heck*-bar a § 1983 suit. The Ninth Circuit has applied a *Heck* bar to a later case involving a
 15 “no contest” plea. *Taylor v. Cty. of Pima*, 913 F.3d 930, 935 (9th Cir. 2019), *cert. denied sub*
 16 *nom. Taylor v. Pima Cty., Arizona*, 140 S. Ct. 2508, 206 L. Ed. 2d 463 (2020).

17 Regardless of whether there is a rule regarding *nolo contendere* pleas, Simmers’ pleas
 18 to two counts of Arson in the Second Degree and ten counts of Vehicle Prowl in the First
 19 Degree were *Alford* pleas, rather than pleas of *nolo contendere* (*nolo contendere* pleas are
 20 not used in Washington State). Simmers’ *Alford* pleas included a stipulation stating the
 21 criminal trial court could review and rely upon the probable cause certification to determine
 22 if there is a factual basis for his guilty pleas and whether to accept them. This was necessary
 23 for legally sufficient pleas that could be accepted by the trial court under Washington law.

24 The plea and sentencing documents, which are a part of the record, are subject to
 25 judicial notice to determine what the court necessarily relied upon in accepting his plea and
 26 in entering his conviction. Dkt. No. 30, pp. 839-860, 862-870. Inasmuch as the criminal trial
 27 court clearly relied upon Simmers’ confession obtained in the course of the questioning he

challenges here, *Heck* bars him from making such claims. A successful challenge would invalidate his pleas to a dozen other convictions that have never been vacated. This is precisely what *Heck* bars and Simmers cannot argue his confessions to arson and vehicle prowling neither exist nor implicate his claims. As is evident in the probable cause certification, and as stated throughout the Complaint, the confession for these offenses is inextricably intertwined with his confession to Gochanauer's murder. For the purposes of evaluating the *Heck* bar, what matters is whether the court relied on the challenged evidence in accepting Simmers' guilty plea or in sentencing. *See Matz v. Klotka*, 769 F.3d 517, 531 (7th Cir. 2014) (holding that *Heck* bars claims where the criminal court relied upon the challenged evidence in determining the plaintiff's sentence where the conviction was the result of a guilty plea); *Smith v. City of Hemet*, 394 F.3d 689, 698-699 (9th Cir. 2005) (examining whether the factual basis for the plaintiff's guilty plea relied upon the confession in determining whether the claims were foreclosed by *Heck*).

Statute of Limitations Bar. The Complaint references the murder as having occurred in 1995 and states that Simmers was 16 years old at the time. Thus, on the face of the Complaint alone expiration of the applicable statute of limitations is readily apparent. As explained in both *Gausvik v. Abbey*, 126 Wn. App. 868, 877, 107 P.3d 98, 103-04 (2005) and *Rodriguez Hidalgo v. Ricardo Perez*, 128 Fed.Appx. 577, 581 (9th Cir. 2005), the state law claims Simmers makes here accrue when a plaintiff is sentenced in his state criminal case, where the alleged violations happened prior to the criminal case (here, interrogation) or where the evidence was admitted in the criminal trial.

Pleading Failures Regarding Individual Defendants. To the extent Simmers states a legal claim against the City Defendants, he should be required to comply with Rule 8 and plead with specificity their individual alleged transgressions. He does not do so with reference to Defendants Miner and Ericks at all and does not do so with reference to Defendants Schlaegel and Hopkins except to the extent he arguably alleges plausible claims for his "wrongful confession" and *Brady* claims. Except to the extent those claims are not barred

1 against Schlaegel and Hopkins by collateral estoppel, judicial estoppel or *Heck*, they
2 constitute impermissible group pleading and should be dismissed.

3 DATED: April 16, 2021

4 KEATING, BUCKLIN & McCORMACK, INC., P.S.

5
6 By: /s/ Paul J. Triesch

7 Paul J. Triesch, WSBA #17445

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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

DOCUMENT(S): CITY DEFENDANTS' REPLY TO PLAINTIFF'S OMNIBUS RESPONSE TO MOTION TO DISMISS OF DEFENDANTS CITY OF BOTHELL, EDWARD HOPKINS, REBECCA (MINER) DONLEY, MARK ERICKS AND DAVID SCHLAEGEL

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